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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,459	03/10/2004	Jeffrey Gilbert	GJE-10102/38	4461
25006	7590	01/24/2006		
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021				
			EXAMINER SMITH, TIMOTHY SCOTT	
			ART UNIT 3632	PAPER NUMBER

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/797,459	GILBERT, JEFFREY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Timothy S. Smith	3632	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 6, 10, 11 and 14-16 is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-9, 12, 13, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3-10-04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

This Office Action represents a non-final first Office Action for the application titled "LAWN WASTE BAG HOLDER," filed March 10, 2004.

#### ***Claim Rejections - 35 USC § 102***

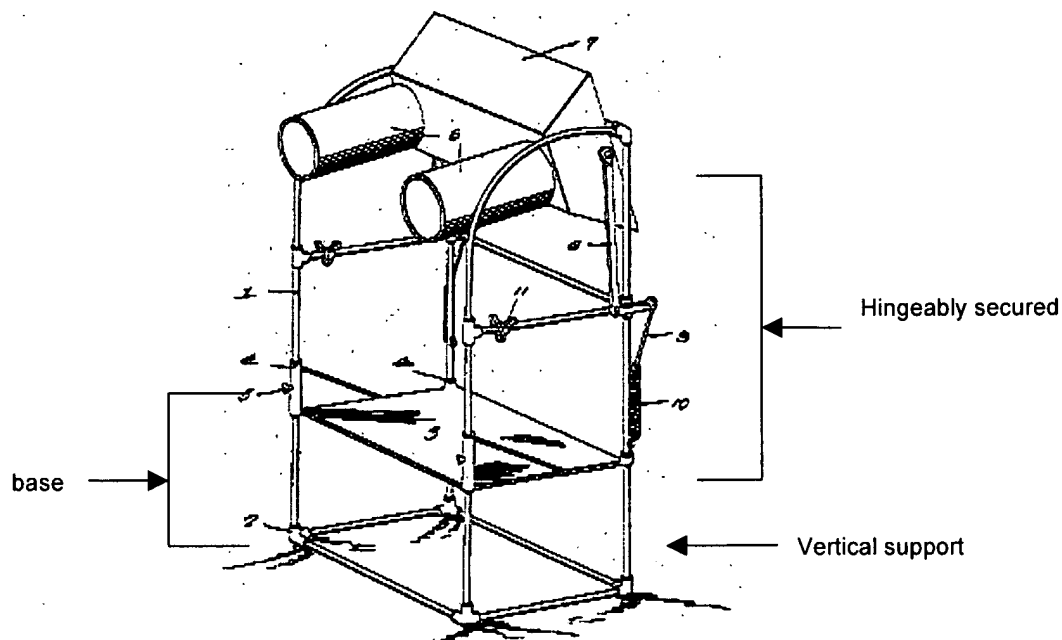
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 7, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,500,964 to Starks.

Starks discloses a yard waste bag support comprising: a polygonal base (see figure) formed of tubular linear pieces (column 1, lines 35-37) joined by elbow fittings (2) having dimensions to accommodate a yard waste bag therein, a plurality of vertical supports extending from said base to a height to accommodate the yard waste bag (see figure below), and a polygonal funnel (7) of unitary construct hingeably secured (see figure below) to at least one of said plurality of vertical supports having a mouth greater than the bag opening size.



***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 3, 4, 8, 9, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starks (U.S. Patent No. 1,500,964).

In regards to claims 2, 3, and 9, Starks discloses the yard waste bag support as applied above, but fails to teach a square base, a base having a closed shape selected from the group consisting of: circular, triangular, and higher than four-sided polygonal,

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and a funnel having a shaped selected from the group consisting of: circular, triangular, and higher than four-sided polygonal. Nevertheless, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Starks to include a square base, a base having a closed shape selected from the group consisting of: circular, triangular, and higher than four-sided polygonal, and a funnel having a shaped selected from the group consisting of: circular, triangular, and higher than four-sided polygonal because such a modification would have been considered a mere design choice which fails to patentably distinguish the claimed invention over the prior art reference of Starks.

In regards to claims 4, and 8 Starks discloses a yard waste bag support as applied to claim 1 above, but Starks does not teach a base having an open side or a funnel being hexagonal; however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the base and the funnel to be of various shapes including open sided and hexagonal since it has been held that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

In regards to claim 13, Starks discloses a frame formed of tubular linear pipe sections (column 1, lines 35-37), but does not explicitly disclose that the tubular linear pipe sections are made of plastic; however, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have created the tubular linear pipe sections from plastic because one would have been motivated to provide a lighter and more cost efficient frame.

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5. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starks in view of U.S. Patent No. 4,138,139 to Alfonso. Regarding claim 17, Starks discloses the yard waste bag support as applied to claim 1 above, but does not teach a wheel rotatably secured to a base. Alfonso discloses a yard waste bag support having wheels (70,72) rotatably connected to a base (see figure1). In view of Alfonso, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the base of Starks to include a wheel or wheels rotatably secured to the base wherein doing so would allow the yard waste bag support to be easily moved. Regarding claim 18, Starks discloses the yard waste bag support as applied to claim 1 above as well as a bag support (3) secured to the base, but does not teach a screen bag support secured to said base. Alfonso discloses a yard waste bag support having a screen bag support (76) secured to a base (see figure 1). In view of Alfonso, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the base of Starks to include a screen bag support secured to the base since the screen is an equivalent means for supporting the bottom of a yard waste bag.

### ***Response to Applicant's Amendments***

6. Applicant's arguments filed November 22, 2005 have been fully considered but they are not persuasive.

Applicant's amendments to the specification have been considered and accepted.

Regarding claim 1, Starks discloses a funnel that is hingeably secured to the vertical supports through linking members (9) and springs (10).

Regarding claim 4, applicant argues that the claimed invention provides unexpected results over the art of record and accordingly, renders the claimed invention nonobvious. Applicant is apprised that the Board provides that applicants must further show that the results were greater than those which would have been expected from the prior art to an unobvious extent, and that the results are of a significant, practical advantage. *Ex parte The NutraSweet Co.*, 19 USPQ2d 1586 (Bd. Pat. App. & Inter. 1991). In the present application, the fact that the applicant claims a base having an open side that provides a spatula-like means to envelope a yard waste bag does not amount to results that are greater than those which would have been expected from the prior art to an unobvious extent. Such a design choice is an obvious variation that naturally flows from the prior art. Accordingly, claim 4 stands rejected.

Regarding claim 8, applicant argues that the one of ordinary skill in the art would not be motivated to replace the trough of Starks with a hexagonal funnel because of a supposed increase in danger, increase in effective footprint of the device, and a modification of the rear horizontal support member. The use of a hexagonal funnel in place of the polygonal funnel taught by Starks would not necessitate a modification to the structure. The replacement would still allow the device to be fully functional. The use of a hexagonal funnel may facilitate contact between the funnel and the rear support member, but would not prevent the device from being fully operational, rather the contact with the rear support member would actually aid in supporting the funnel

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when the device is being used with a yard waste bag. Additionally, the hexagonal shape of the funnel does not pose a safety hazard as applicant argues. When the funnel is raised in order to accommodate a bag, the location of the panels of the funnel are such that it is very unlikely that a user would come into contact with the angled sections of the funnel. It is more likely that the user would come into contact with the cylinders having smooth rounded ends that protrude from the backside of the funnel, which by no means present any safety hazard. Furthermore, when the funnel is in its operational state (lowered), the angled sections of the funnel do not necessarily present any danger, as the footprint of the funnel does not protrude vastly beyond the structural frame, rather the funnel is contained within the frame of the device. Because the funnel is positioned within the confines of the frame, any such contact would be with the frame members, as oppose to contact the angled sections of the funnel. Such contact with the frame members do not present any safety hazard. Accordingly, claim 8 stands rejected.

***Allowable Subject Matter***

7. Amendments made to claims 5-6, 10-11, and 14-16 have been considered and stand allowed.

The following is a statement of reasons for the indication of allowable subject matter.



Regarding claim 5, the prior art failed to teach a funnel comprising a support frame and a fabric wall supported from said frame.

Regarding claim 10, the prior art failed to teach a funnel having a first side that is hinged and is supported on at least one side not adjacent to said first side.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Smith whose telephone number is 571-272-8296. The examiner can normally be reached on M-F: 8:30AM to 5:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

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TSS

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Timothy S. Smith  
Patent Examiner  
Art Unit 3632  
January 19, 2006

 4/19/06

ROBERT P. OLSZEWSKI  
SUPERVISORY PATENT EXAMINER  
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